

New Jersey Statutes Annotated

Title 9. Children--Juvenile and Domestic Relations Courts (Refs & Annos)

Subtitle 1. Parental Relationship and Care, Custody, Guardianship and Support of Children in General

Chapter 2. Care, Custody, Guardianship and Support of Children in General (Refs & Annos)

Article 1/2 . Custody in General

N.J.S.A. 9:2-1

9:2-1. Custody of children of parents divorced in another state or country; action in Superior Court; notice to persons interested; judgment; exclusion from hearing; records not open to public inspection

Currentness

After a divorce adjudged in any other State or country, if minor children of the marriage are inhabitants of this State, the Superior Court, in an action brought by either parent or by a guardian ad litem in behalf of the children, such notice being given to parents as the court shall direct, may make such judgment concerning their care, custody, education and maintenance as if the divorce had been obtained in this State. If the minor child or minor children have not, at the commencement of the action, reached the age of sixteen years, and if it is represented to the court by affidavit or under oath that evidence will be adduced involving the moral turpitude of either parent, or of such minor child or children, or that evidence will be adduced which may reflect upon the good reputation or social standing of the child or children, then the court shall admit to the hearing of such case only such persons as are directly interested in the matter being then heard. The records of such proceedings, including all papers filed with the court, shall be withheld from indiscriminate public inspection, but shall be open to inspection by the parents, or their attorneys, and to no other person or persons except by order of the court made for that purpose.

Credits

Amended by L.1948, c. 321, p. 1294, § 1; L.1953, c. 9, p. 69, § 2.

Notes of Decisions (30)

N. J. S. A. 9:2-1, NJ ST 9:2-1

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N.J.S.A. 9:2-2

9:2-2. Custody of children of divorced or separated parents within
jurisdiction of Superior Court; removal from jurisdiction; consent; security

Currentness

When the Superior Court has jurisdiction over the custody and maintenance of the minor children of parents divorced, separated or living separate, and such children are natives of this State, or have resided five years within its limits, they shall not be removed out of its jurisdiction against their own consent, if of suitable age to signify the same, nor while under that age without the consent of both parents, unless the court, upon cause shown, shall otherwise order. The court, upon application of any person in behalf of such minors, may require such security and issue such writs and processes as shall be deemed proper to effect the purposes of this section.

Credits

Amended by L.1948, c. 321, p. 1295, § 2.

Notes of Decisions (150)

N. J. S. A. 9:2-2, NJ ST 9:2-2

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N.J.S.A. 9:2-3

9:2-3. Custody of child of parents living separately; action in Superior Court; powers of court; judgments; temporary custody; exclusion from hearing; records not open to public inspection

Currentness

When the parents of a minor child live separately, or are about to do so, the Superior Court, in an action brought by either parent, shall have the same power to make judgments or orders concerning care, custody, education and maintenance as concerning a minor child whose parents are divorced. Until the court determines the final custody of the minor child and unless the parties agree otherwise, the court shall determine temporary custody based upon the best interests of the child with due regard to the caretaking arrangement that previously existed. No child shall be taken forcibly or against the will of the parent having custody by the other parent without a court order. If the child has not, at the time of the commencement of the action, reached the age of 16 years, and if it is represented to the court by affidavit or under oath that evidence will be adduced involving the moral turpitude of either parent, or of the minor child, or that evidence will be adduced which may reflect upon the good reputation or social standing of the child, then the court shall admit to the hearing of such case only such persons as are directly interested in the matter then being heard. The records of such proceedings, including all papers filed with the court, shall be withheld from indiscriminate public inspection, but shall be open to inspection by the parents, or their attorneys, and to no other person except by order of the court made for that purpose.

Credits

Amended by L.1948, c. 321, p. 1295, § 3; L.1953, c. 9, p. 70, § 3; [L.1990, c. 26, § 1](#), eff. [Aug. 19, 1990](#).

[Notes of Decisions \(23\)](#)

N. J. S. A. 9:2-3, NJ ST 9:2-3

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N.J.S.A. 9:2-4

9:2-4. Legislative findings and declarations; parents' right to custody equal; custody order; factors; guardian ad litem; agreement as to custody

Currentness

The Legislature finds and declares that it is in the public policy of this State to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

In any proceeding involving the custody of a minor child, the rights of both parents shall be equal and the court shall enter an order which may include:

- a. Joint custody of a minor child to both parents, which is comprised of legal custody or physical custody which shall include: (1) provisions for residential arrangements so that a child shall reside either solely with one parent or alternatively with each parent in accordance with the needs of the parents and the child; and (2) provisions for consultation between the parents in making major decisions regarding the child's health, education and general welfare;
- b. Sole custody to one parent with appropriate parenting time for the noncustodial parent; or
- c. Any other custody arrangement as the court may determine to be in the best interests of the child.

In making an award of custody, the court shall consider but not be limited to the following factors: the parents' ability to agree, communicate and cooperate in matters relating to the child; the parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse; the interaction and relationship of the child with its parents and siblings; the history of domestic violence, if any; the safety of the child and the safety of either parent from physical abuse by the other parent; the preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision; the needs of the child; the stability of the home environment offered; the quality and continuity of the child's education; the fitness of the parents; the geographical proximity of the parents' homes; the extent and quality of the time spent with the child prior to or subsequent to the separation; the parents' employment responsibilities; and the age and number of the children. A parent shall not be deemed unfit unless the parents' conduct has a substantial adverse effect on the child.

The court, for good cause and upon its own motion, may appoint a guardian ad litem or an attorney or both to represent the minor child's interests. The court shall have the authority to award a counsel fee to the guardian ad litem and the attorney and to assess that cost between the parties to the litigation.

- d. The court shall order any custody arrangement which is agreed to by both parents unless it is contrary to the best interests of the child.

e. In any case in which the parents cannot agree to a custody arrangement, the court may require each parent to submit a custody plan which the court shall consider in awarding custody.

f. The court shall specifically place on the record the factors which justify any custody arrangement not agreed to by both parents.

Credits

Amended by L.1948, c. 321, p. 1296, § 4; L.1974, c. 143, § 1, eff. Nov. 11, 1974; [L.1990, c. 26, § 2, eff. Aug. 19, 1990](#); [L.1997, c. 299, § 9, eff. Jan. 8, 1998](#).

[Notes of Decisions \(266\)](#)

N. J. S. A. 9:2-4, NJ ST 9:2-4

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N.J.S.A. 9:2-4.1

9:2-4.1. Custody and visitation denied to person fathering a
child through rape; obligation to support minor child unaffected

Effective: January 18, 2000

[Currentness](#)

a. Notwithstanding any provision of law to the contrary, a person convicted of sexual assault under [N.J.S.2C:14-2](#) shall not be awarded the custody of or visitation rights to any minor child, including a minor child who was born as a result of or was the victim of the sexual assault, except upon a showing by clear and convincing evidence that it is in the best interest of the child for custody or visitation rights to be awarded. However, a court that awards such custody or visitation rights to a person convicted of sexual assault under [N.J.S.2C:14-2](#) shall stay enforcement of the order or judgment for at least 10 days in order to permit the appeal of the order or judgment and application for a stay in accordance with the Rules of Court.

b. Notwithstanding any provision of law to the contrary, a person convicted of sexual contact under [N.J.S.2C:14-3](#) or endangering the welfare of a child under [N.J.S.2C:24-4](#) shall not be awarded the custody of or visitation rights to any minor child, except upon a showing by clear and convincing evidence that it is in the best interest of the child for such custody or visitation rights to be awarded. However, a court that awards such custody or visitation rights to a person convicted of sexual contact under [N.J.S.2C:14-3](#) or endangering the welfare of a child under [N.J.S.2C:24-4](#) shall stay enforcement of the order or judgment for at least 10 days in order to permit the appeal of the order or judgment and application for a stay in accordance with the Rules of Court.

c. A denial of custody or visitation under this section shall not by itself terminate the parental rights of the person denied visitation or custody, nor shall it affect the obligation of the person to support the minor child.

d. In any proceeding for establishment or enforcement of such an obligation of support the victim shall not be required to appear in the presence of the obligor and the victim's and child's whereabouts shall be kept confidential.

Credits

[L.1995, c. 55, § 1, eff. March 17, 1995](#). Amended by [L.1999, c. 424, § 1, eff. Jan. 18, 2000](#).

Editors' Notes

SENATE WOMEN'S ISSUES, CHILDREN AND FAMILY SERVICES COMMITTEE STATEMENT

Assembly, No. 1586--L.1999, c. 424

The Senate Women's Issues, Children and Family Services Committee favorably reports Assembly Bill No. 1586 with committee amendments.

As amended by committee, this bill amends P.L.1995, c.55 (C.9:2-4.1) to deny the custody or visitation rights of a person convicted of sexual assault to any minor child, including a minor child who was born as a result of or was the victim of the sexual assault.

The bill also amends the statute to deny the custody or visitation rights of a person who has been convicted of sexual contact under [N.J.S.2C:14-3](#) or endangering the welfare of a child under [N.J.S.2C:24-4](#), to any minor child.

The committee amended the bill to delete the exceptions in the bill which permit a person who has been convicted of sexual assault, sexual conduct or endangering the welfare of a child, to be awarded custody or visitation rights to a minor child if there is a showing of clear and convincing evidence that it is in the best interest of the child for custody or visitation rights to awarded.

This bill is identical to Senate Bill No.1187 SCA (Allen), which was reported by this committee on September 17, 1998.

[Notes of Decisions \(1\)](#)

N. J. S. A. 9:2-4.1, NJ ST 9:2-4.1

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N.J.S.A. 9:2-4.2

9:2-4.2. Parental access to unemancipated child's records

Currentness

a. Every parent, to the extent permitted by federal and State laws concerning privacy, except as prohibited by federal and State law, shall have access to records and information pertaining to his or her unemancipated child, including, but not limited to, medical, dental, insurance, child care and educational records, whether or not the child resides with the parent, unless that access is found by the court to be not in the best interest of the child or the access is found by the court to be sought for the purpose of causing detriment to the other parent.

b. The place of residence of either parent shall not appear on any records or information released pursuant to the provisions of this section.

c. A child's parent, guardian or legal custodian may petition the court to have a parent's access to the records limited. If the court, after a hearing, finds that the parent's access to the record is not in the best interest of the child or that the access sought is for the purpose of causing detriment to the other parent, the court may order that access to the records be limited.

Credits

L.1997, c. 406, § 1, eff. Jan. 19, 1998.

N. J. S. A. 9:2-4.2, NJ ST 9:2-4.2

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N.J.S.A. 9:2-5

9:2-5. Death of parent having custody; reversion of custody to
surviving parent; appointment of guardian by Superior Court; removal

Currentness

In case of the death of the parent to whom the care and custody of the minor children shall have been awarded by the Superior Court, or in the case of the death of the parent in whose custody the children actually are, when the parents have been living separate and no award as to the custody of such children has been made, the care and custody of such minor children shall not revert to the surviving parent without an order or judgment of the Superior Court to that effect. The Superior Court shall have the right, in an action brought by a guardian ad litem on behalf of the children, to appoint such friend or other suitable person, guardian of such minor children, and shall have the right to remove such guardian, and to appoint a new guardian or guardians, and to make such judgments and orders, from time to time, as the circumstances of the case and the benefit of the children shall require.

Credits

Amended by L.1948, c. 321, p. 1297, § 5; L.1953, c. 9, p. 71, § 4.

Notes of Decisions (17)

N. J. S. A. 9:2-5, NJ ST 9:2-5

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N.J.S.A. 9:2-6

9:2-6. Repealed by L.1990, c. 26, § 9, eff. Aug. 19, 1990

[Currentness](#)

N. J. S. A. 9:2-6, NJ ST 9:2-6

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N.J.S.A. 9:2-7

9:2-7. Habeas corpus to determine custody of child; access to child

[Currentness](#)

When any husband and wife shall live in a state of separation without being divorced, and shall have any minor child of the marriage, the Superior Court, upon such child being brought before it upon habeas corpus, shall award the custody of such child and make such order or judgment relating thereto for the access of either parent to such child, at such times and under such circumstances, as it may deem proper.

Credits

Amended by L.1948, c. 321, p. 1297, § 6; L.1953, c. 9, p. 71, § 5.

[Notes of Decisions \(11\)](#)

N. J. S. A. 9:2-7, NJ ST 9:2-7

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N.J.S.A. 9:2-7.1

9:2-7.1. Visitation rights for grandparents or siblings

Currentness

a. A grandparent or any sibling of a child residing in this State may make application before the Superior Court, in accordance with the Rules of Court, for an order for visitation. It shall be the burden of the applicant to prove by a preponderance of the evidence that the granting of visitation is in the best interests of the child.

b. In making a determination on an application filed pursuant to this section, the court shall consider the following factors:

- (1) The relationship between the child and the applicant;
- (2) The relationship between each of the child's parents or the person with whom the child is residing and the applicant;
- (3) The time which has elapsed since the child last had contact with the applicant;
- (4) The effect that such visitation will have on the relationship between the child and the child's parents or the person with whom the child is residing;
- (5) If the parents are divorced or separated, the time sharing arrangement which exists between the parents with regard to the child;
- (6) The good faith of the applicant in filing the application;
- (7) Any history of physical, emotional or sexual abuse or neglect by the applicant; and
- (8) Any other factor relevant to the best interests of the child.

c. With regard to any application made pursuant to this section, it shall be prima facie evidence that visitation is in the child's best interest if the applicant had, in the past, been a full-time caretaker for the child.

Credits

L.1971, c. 420, § 1, eff. Feb. 1, 1972. Amended by L.1973, c. 100, § 1, eff. May 2, 1973; L.1987, c. 363, § 2, eff. Jan. 6, 1988; [L.1993, c. 161, § 1, eff. June 29, 1993](#).

Editors' Notes

ASSEMBLY JUDICIARY COMMITTEE STATEMENT

Assembly, No. 644--L.1987, c. 363

The Assembly Judiciary Committee reports favorably Assembly Bill No. 644.

This bill permits siblings of minor children whose parent or parents are deceased, divorced or living separate and apart, to apply to the Superior Court for visitation rights. The bill authorizes the court to grant visitation rights to siblings if it is in the best interests of the minor children. Currently, there is no statutory right created in New Jersey that would allow siblings to apply for visitation rights, although there is a codified right of grandparents to visit with their minor grandchildren.

[Notes of Decisions \(65\)](#)

N. J. S. A. 9:2-7.1, NJ ST 9:2-7.1

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N.J.S.A. 9:2-7.2

9:2-7.2. Separation of parents; determination of custody and visitation rights after concealment of child

Currentness

When any husband and wife shall live in a state of separation without being divorced and shall have any minor child or children of the marriage, and when either spouse shall willfully conceal the whereabouts of said child or children, the Superior Court, Chancery Division, Family Part, upon application of the aggrieved parent, shall conduct a preliminary hearing as to the custody of said child or children and shall make such order relating thereto for the access of either parent to such child at such times and under such circumstances as it may deem proper.

Credits

L.1974, c. 152, § 1, eff. Nov. 11, 1974. Amended by L.1991, c. 91, § 189, eff. April 9, 1991.

N. J. S. A. 9:2-7.2, NJ ST 9:2-7.2

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N.J.S.A. 9:2-8

9:2-8. Repealed by L.1948, c. 321, p. 1299, § 10, eff. Sept. 15, 1948

[Currentness](#)

N. J. S. A. 9:2-8, NJ ST 9:2-8

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N.J.S.A. 9:2-9

9:2-9. Parents or custodian of child unfit; action in Superior Court, Chancery Division, Family Part

[Currentness](#)

When the parents of any minor child or the parent or other person having the actual care and custody of any minor child are grossly immoral or unfit to be intrusted with the care and education of such child, or shall neglect to provide the child with proper protection, maintenance and education, or are of such vicious, careless or dissolute habits as to endanger the welfare of the child or make the child a public charge, or likely to become a public charge; or when the parents of any minor child are dead or cannot be found, and there is no other person, legal guardian or agency exercising custody over such child; it shall be lawful for any person interested in the welfare of such child to institute an action in the Superior Court, Chancery Division, Family Part, in the county where such minor child is residing, for the purpose of having the child brought before the court, and for the further relief provided by this chapter. The court may proceed in the action in a summary manner or otherwise.

Credits

Amended by L.1948, c. 321, p. 1297, § 7; L.1949, c. 245, p. 784, § 1; L.1953, c. 9, p. 72, § 6; [L.1991, c. 91, § 190, eff. April 9, 1991](#).

[Notes of Decisions \(30\)](#)

N. J. S. A. 9:2-9, NJ ST 9:2-9

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N.J.S.A. 9:2-10

9:2-10. Order or judgment as to custody; bond

Currentness

In an action brought pursuant to [R.S. 9:2-9](#), the Superior Court, after an investigation shall have been made by the chief probation officer of the county in which the child may reside, concerning the reputation, character and ability of the plaintiff, or such other person as the court may direct, to properly care for such child, shall make an order or judgment committing the child to the care and custody of such person, who will accept the same, as the court shall for that purpose designate and appoint, until such child shall attain the age of eighteen years, or the further direction of the court; provided, however, that in proper cases such care and custody may be exercised by supervision of the child in his own home, unless the court shall otherwise order. Such order or judgment may require the giving of a bond by the person to whose care or custody the said child may be committed, with such security and on such conditions as the court shall deem proper.

Credits

Amended by L.1948, c. 321, p. 1298, § 8; L.1949, c. 245, p. 785, § 2; L.1953, c. 9, p. 72, § 7; [L.1991, c. 91, § 191, eff. April 9, 1991](#).

[Notes of Decisions \(2\)](#)

N. J. S. A. 9:2-10, NJ ST 9:2-10

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N.J.S.A. 9:2-11

9:2-11. Commitment of child to child caring society; cost of proceedings; consent to adoption of child; support by relative

Currentness

The court before which such proceedings shall be conducted, may, in the same manner but in lieu of committing such child, as in [section 9:2-10](#) of this Title specified, commit such child to the care and custody of any society duly incorporated under the laws of this State for the care of children. In such case the court may, in its discretion, cause the person in whose custody such child was, or the county in which such child may reside, to pay all costs and expenses of such proceedings, and such person or society or institution to whom or to which such child is committed may, upon special authority granted in the order or judgment of commitment, give his or its consent, and such consent will be sufficient, to the legal adoption of such child; *provided, however*, that the granting of the right to consent to adoption shall in no wise be construed as authority to place a child for adoption except in accordance with the provisions of chapter three of this Title ([§ 9:3-1 et seq.](#)).¹

Whenever the court shall have made an order or judgment with respect to the care and custody of a child as contemplated by this Title, and it shall appear that the person in whose custody such child was is a relative financially able and legally liable to provide support for such child, the court may make a supplementary order requiring such relative to make such payment or payments for the support of such child as the court may deem reasonable under the circumstances.

Credits

Amended by L.1948, c. 321, p. 1298, § 9; L.1949, c. 245, p. 786, § 3; L.1953, c. 9, p. 73, § 8.

[Notes of Decisions \(2\)](#)

Footnotes

¹ Repealed. See, now, [§ 9:3-37 et seq.](#)

N. J. S. A. 9:2-11, NJ ST 9:2-11

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N.J.S.A. 9:2-12

9:2-12. Repealed by L.1951, First Sp.Sess., c. 349, p. 1461, § 1; L.1953, c. 9, p. 73, § 9, eff. March 19, 1953

[Currentness](#)

N. J. S. A. 9:2-12, NJ ST 9:2-12

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N.J.S.A. 9:2-12.1

9:2-12.1. Service member as a party to custody or parenting time arrangement; definitions; considerations prior to issuing order; restrictions upon modifications; party agreements

Effective: March 26, 2013

[Currentness](#)

a. As used in this section:

“Deployment” means: (1) the assignment of a service member by military order for military combat, or other military operation, mission, or service requiring a prolonged absence of 30 or more days, making the service member unable during that absence to exercise parenting time with a child for whom the service member is a parent or caretaker; or (2) the participation of a service member in full-time training duty, annual training duty, National Guard training, reserve training, or attendance at a military service school designated by law or by the Secretary of the applicable military branch concerned, requiring a prolonged absence of 30 or more days, making the service member unable during that absence to exercise parenting time with a child for whom the service member is a parent or caretaker.

“Military” means the armed forces of the United States, including the Army, Navy, Air Force, Marine Corps, and Coast Guard, the National Guard and any other reserve component of the armed forces, and the merchant marine when organized under the federal law as a public military force.

“Service member” means a member of the military, as defined herein, who is not retired.

“Service-related treatment” means treatment provided to a service member or veteran service member for a service-related injury, illness, or other health condition requiring a prolonged absence of 30 or more days, making the service member unable during that absence to exercise parenting time with a child for whom the service member is the parent or caretaker.

b. (1) The court, whenever making a determination concerning child custody or parenting time, shall not consider the absence or potential absence of a military service member by reason of deployment or service-related treatment as a factor in determining the best interest of a child for whom the service member is a parent or caretaker.

(2) The court shall, to the extent possible, expedite a determination on an application concerning a child custody or parenting time arrangement by a service member or the other parent or caretaker for a child in any case in which there is no existing child custody or parenting time order and the service member has received official written notice of deployment or service-related treatment from the military.

c. (1) Whenever a service member is a party to a child custody or parenting time arrangement and has received an official written notice of deployment or service-related treatment, the service member shall:

(a) notify the other parent or caretaker involved in the child custody or parenting time arrangement of the service member's deployment or treatment location and scheduled dates thereat, no later than the day immediately preceding the service member's departure, or the 10th day after receipt of the official written notice for the deployment or treatment, whichever date occurs first, unless the service member's notice to the other parent or caretaker is prohibited by the military; and

(b) provide timely information, if not prohibited by the military, regarding the service member's scheduled leave or other availability during the service member's period of deployment or service-related treatment.

(2) The other parent or caretaker involved in the child custody or parenting time arrangement with the service member shall:

(a) make the child reasonably available to the service member while the service member is on leave or is otherwise available in accordance with the information provided to the other parent or caretaker pursuant to subparagraph (b) of paragraph (1) of this subsection; and

(b) facilitate opportunities for communication, including telephonic and electronic mail contact, to the extent feasible, between the service member and the child during the period of the service member's deployment or service-related treatment.

d. (1) During the period of the service member's deployment or service-related treatment, the court shall not enter an order modifying any judgment or order concerning child custody or parenting time, or issue a new order that changes an existing child custody arrangement in effect on the day immediately preceding the service member's departure for the deployment or treatment without the consent of all parties, except when the court finds it to be in the best interests of the child. The court may appoint a guardian ad litem, an attorney, or both to represent the child's interests with regard to any pending court determination concerning child custody or parenting time.

(2) Whenever the court finds it to be in the best interest of the child to enter an order modifying any judgment or order concerning child custody or parenting time, or to issue a new order that changes the existing child custody arrangement during the period of the service member's deployment or service-related treatment, the court may order parenting time for a family member of the service member who has a close and substantial relationship with the child. This parenting time shall not create a legal entitlement or standing to assert any other right to parenting time with the child.

e. During the period of the service member's deployment or service-related treatment and for 90 days following the day the deployment or treatment ended, New Jersey shall retain exclusive, continuing jurisdiction, in accordance with the provisions of the "Uniform Child Custody Jurisdiction and Enforcement Act," [P.L.2004, c. 147 \(C.2A:34-53 et seq.\)](#), over any determination concerning child custody or parenting time.

f. Upon the service member's return from deployment or service-related treatment, the child custody or parenting time order in effect on the day immediately preceding the service member's departure for that deployment or treatment shall be resumed, and shall not be subject to modification for 90 days following the day the deployment or treatment ended; however, this provision shall not preclude any application to preserve the health, safety, and welfare of the child.

g. Any application pursuant to this section by a service member parent or caretaker during the period of deployment or service-related treatment shall not, without the express consent of the service member, be considered a waiver of any right or protection

provided under the “Servicemembers Civil Relief Act,” 50 U.S.C. App. s.501 et seq., or the “New Jersey Soldiers' and Sailors' Civil Relief Act of 1979,” P.L.1979, c. 317 ([C.38:23C-1 et seq.](#)).

h. Nothing in this section shall prevent a service member parent or caretaker and the other parent or caretaker from agreeing to a care arrangement for a child during the period of deployment or service-related treatment.

Credits

[L.2013, c. 7, § 1, eff. March 26, 2013.](#)

N. J. S. A. 9:2-12.1, NJ ST 9:2-12.1

Current with laws effective through L.2013, c. 79 and J.R. No. 9.

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